

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922

No. 165

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BLAMBERG BROTHERS, APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

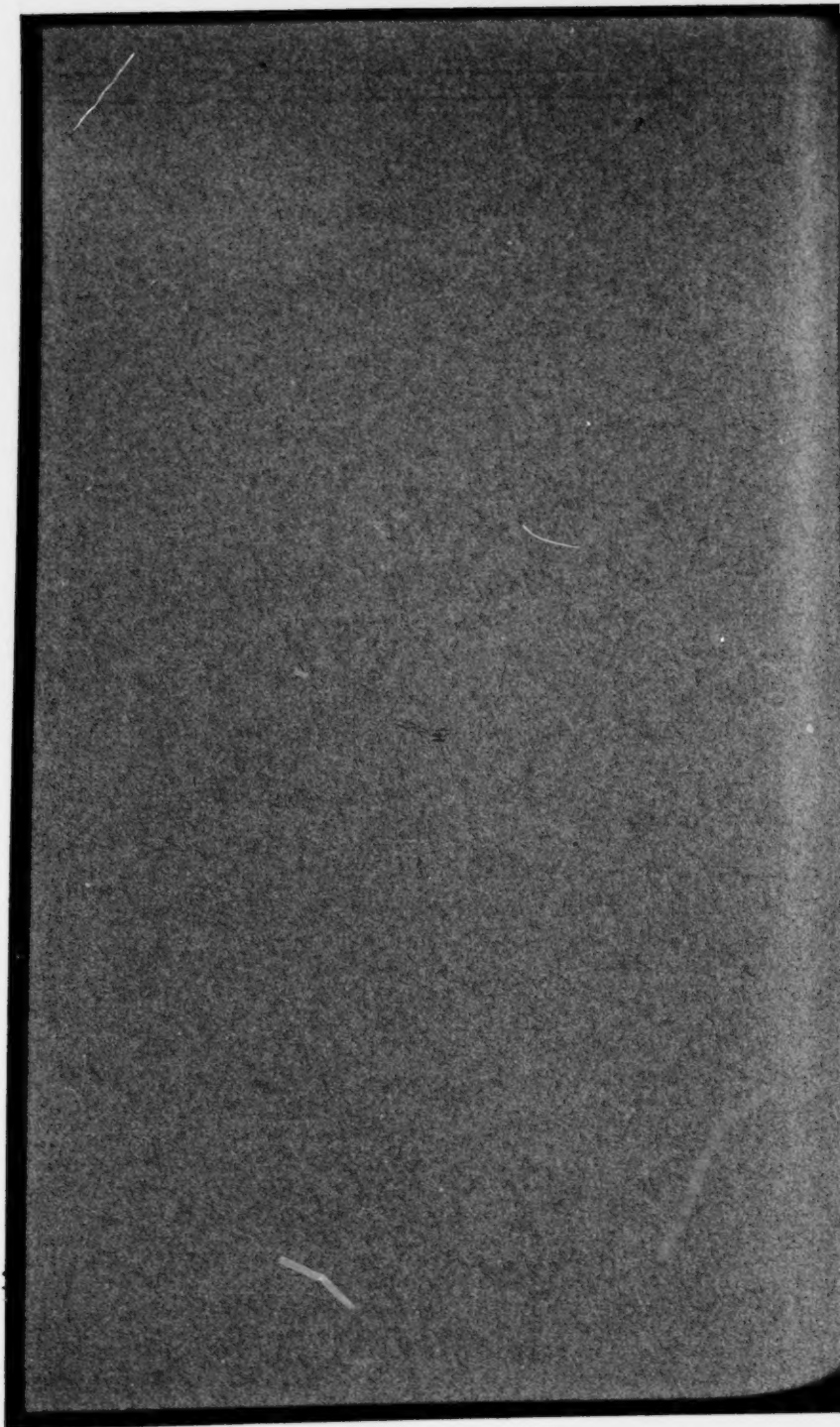
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MARYLAND.

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FILED SEPTEMBER 2, 1921.

(38,457)



(28,467)

SUPREME COURT OF THE UNITED STATES.

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BLAMBERG BROTHERS, APPELLANT,

*vs.*

THE UNITED STATES OF AMERICA.

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THE DISTRICT OF MARYLAND.

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## TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,  
*District of Maryland, To-wit:*

At a District Court of the United States for the District of Maryland Begun and Held in the City of Baltimore on the First Tuesday in March (Being the First Day of the Same Month), in the Year of Our Lord One Thousand Nine Hundred and Twenty-one.

Present: The Honorable John C. Rose, Judge Maryland District; Robert R. Carman, Esq., Attorney; William W. Stockham, Esq., Marshal; Arthur L. Spamer, Clerk.

Among other were the following proceedings, to wit:

No. 797. Admiralty.

BLAMBERG BROTHERS, a Body Corporate,

versus

UNITED STATES OF AMERICA.

*Libel.*

Filed 26th February, 1921.

To the Honorable the Judge of the United States District Court for the District of Maryland:

The libel and complaint of Blamberg Brothers, a body corporate, against United States of America in a cause of contract and cargo damage, civil and maritime, alleges and respectfully shows to this Honorable Court, as follows:

First. Your Libellant is a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, having its principal office and place business at No. 107 Commerce Street, Baltimore, Maryland, and is engaged in the business of exporting and importing flour, corn, grain and other commodities.

Second. At all times hereinafter mentioned, the respondent above mentioned, was, and now is the owner and/or operator of the schooner barge "Catskill," of the registered tonnage of approximately 2,300 tons, which at all the said times was employed as a merchant vessel in the common carriage of merchandise for hire, between, among others, the ports of New York and Baltimore, United States of America, and the port of Havana, Cuba.

Third. That said barge "Catskill" is now, or will be, during the pendency of process hereunder, within this District and within the jurisdiction of this Honorable Court.

Fourth. That on or about the sixth day of October, Nineteen Hundred and Twenty, the Libellant shipped and placed  
3 aboard the said vessel, then lying in the Port of Baltimore, Maryland, 1,500 bags of corn in good order and condition, to be carried by the said "Catskill" to the port of Havana, Cuba, and there to be delivered in like good order and condition, as when shipped to the order of your Libellant notify Demetrio Mederos and Felipe Amaral, in consideration of certain agreed freight, then and there paid by said Libellant, and in accordance with the valid terms of certain Bills of Lading, then and there signed and delivered to the Libellant shipper, by the duly authorized Agent of the barge "Catskill" and of your Respondent.

Fifth. Thereafter, the said barge "Catskill," having on board said merchandise, sailed from the said port of Baltimore, and subsequently, to wit, during the month of November, Nineteen Hundred and Twenty, arrived at the port of Havana, Cuba, but notwithstanding all of the aforesaid, the said barge "Catskill," has never made delivery of said shipment, tho it was possible so to do, and in addition thereto the property of your Libellant, as aforesaid, by reason of such delay, and failure to deliver, has greatly deteriorated, and is not in like good order and condition as when shipped, being, on the other hand, short, slack and otherwise seriously injured and damaged, which has caused this Libellant great injury and damage.

Sixth. As has been averred, your Libellant is the owner of the aforesaid merchandise and the holder for value of the aforesaid Bills of Lading, and of all the rights thereunder, and are entitled to have delivery of the aforesaid merchandise, made in accordance with the terms and conditions of said Bills of Lading.

Seventh. By reason of the premises, your Libellant has sustained damages in the sum of Fifteen Thousand (\$15,000) Dollars, as  
4 nearly as the same can now be estimated, no part of which has been paid, although the same has been demanded.

Eighth. All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your Libellant prays that on the filing with this Honorable Court of a sworn return of the service of copies of this Libel on the United States Attorney for the District of Maryland, and on the Attorney General of the United States, as provided for in the United States Public Act No. 156—66th Congress, the said Respondent be required to appear and answer all and singular the matters aforesaid, according to the principles of law and the rules of practice obtaining in like cases between private parties, and that this Honorable Court be pleased to decree to your Libellant its damages

with interest and costs, and that your Libellant may have such other and further relief as in law and justice it may be entitled to receive.

JOSEPH TOWNSEND ENGLAND,  
J. EDWARD TYLER,

*Proctors for Libellant.*

STATE OF MARYLAND,

*City of Baltimore, To-wit:*

R. Lee Blamberg, being duly sworn, deposes and says, that he is the Vice-President of Blamberg Brothers, Libellant herein, and that he has read the foregoing Libel and complaint and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

That the reason this verification is made by dependent and not by Libellant, is that Libellant is a corporation, but deponent is duly authorized to make this affidavit.

5 Sworn to before me this 25 day of February, 1921.

[Notary's Seal.]

JULIA BRADLEY,  
*Notary Public.*

STATE OF MARYLAND,

*City of Baltimore, To-wit:*

Joseph Townsend England, being duly sworn, deposes and states that he is the Proctor in the matter of Blamberg Brothers, a body corporate, against the United States of America, and furthermore, that he has duly served a copy of said libel on the United States District Attorney for the District of Maryland, and that he mailed a copy by registered mail to the Attorney General of the United States, this sworn return being made in accordance with the provisions of the Public Law No. 156—66th Congress, Section 3076, and of all laws of the United States of America applicable thereto.

JOSEPH TOWNSEND ENGLAND,  
*Proctor.*

Subscribed and sworn to before me this 25 day of February, 1921.

[Notary's Seal.]

JULIA BRADLEY,  
*Notary Public.*

*Answer of Respondent.*

Filed 22nd April, 1921.

In the District Court of the United States for the District of Maryland.

BLAMBERG BROTHERS, a Body Corporate,

against

UNITED STATES OF AMERICA.

To the Honorable John C. Rose, Judge of the District Court of the United States for the District of Maryland:

The answer of the respondent, the United States of America, to the libel herein against it exhibited in a cause of contract and cargo damage, civil and maritime, alleges as follows:

First. Answering the first paragraph of said libel, your respondent, alleges that it has no knowledge of its own with respect to the matters and facts therein contained, but believes them to be true.

Second. Answering the second paragraph of said libel, your respondent admits it is the qualified owner of the said barge Catskill as hereinafter will more fully appear, but denies that it is or has ever been in charge of the operation of the said barge. Your respondent admits the registered tonnage of the vessel as alleged and while it has no knowledge of its own, believes that same was employed as a merchant vessel as therein alleged.

Third. Answering the third paragraph of the libel, your respondent is advised that said barge Catskill is presently at Havana, Cuba, and has no knowledge of its own as to when the said barge is expected to arrive in this jurisdiction.

7 Fourth. Answering the fourth paragraph of the libel, your respondent alleges that it has no knowledge of the facts therein alleged and demands strict proof thereof.

Fifth. Answering the fifth paragraph of the libel, your respondent alleges that it has no knowledge of the facts therein alleged and demands strict proof thereof.

Sixth. Answering the sixth paragraph of the libel, your respondent alleges that it has no knowledge of the facts therein alleged, and requires strict proof thereof.

Seventh. Answering the seventh paragraph of the libel, your respondent alleges that it has no knowledge of the facts therein alleged, and demands strict proof thereof.



Eighth. Answering the eighth paragraph of the libel, your respondent admits the admiralty and maritime jurisdiction of this Honorable Court.

And further answering said libel, your respondent alleges as follows:

(1) That on the twenty-sixth day of July, 1920, your respondent, represented by the United States Shipping Board and by the United States Shipping Board Emergency Fleet Corporation, entered into a contract for the sale of the barge Catskill with the Guidera Towing and Transportation Company, a corporation of the State of New York, with its principal office in New York City, in said State.

(2) That by the terms of the said agreement, your respondent agreed to sell the said barge Catskill, to the said Guidera Towing and Transportation Company, at and for the sum of sixty thousand dollars, six thousand dollars of which was to be paid on the date of the execution of the contract aforesaid, the balance thereof, to be paid in equal monthly installments of three thousand dollars, all of which will more fully appear from copy of the said contract or agreement filed herewith and prayed to be taken as a part hereof, as fully as if set out at length herein.

(3) That the said Guidera Towing and Transportation Company has paid your respondent the sum of six thousand dollars but has defaulted in the payment of each and every installment due and owing your respondent under said contract or agreement.

(4) That the said Barge Catskill was delivered to the Guidera Towing and Transportation Company on or about the thirtieth day of June, 1920, and before her construction was complete, and since which time your respondent has neither directly nor indirectly assumed any control over her management or operation.

(5) That the contract of affreightment set forth in the libel was not made by the libellants with your respondent or with anyone duly authorized by your respondent to enter into such a contract or agreement; and to the contrary, your respondent alleges that the said barge was under complete control and custody of and was being managed and operated by the said Guidera Towing and Transportation Company and that any contract of affreightment entered into by the libellant as alleged was made and entered into by it or on its behalf with the said Guidera Towing and Transportation Company, or by some person, firm or coporation representing the said Guidera Towing and Transportation Company; your respondent has no knowledge concerning the making of the said contract, or the circumstances and conditions under which the same was made, nor has it any knowledge with respect to the loading, transportation, or discharge of the cargo, as alleged in the libel.

Wherefore, having fully answered said libel, your respondent prays that same be dismissed with costs.

Respectfully submitted,

ROBT. R. CARMAN,  
United States Attorney,  
Proctor for Respondent.

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UNITED STATES OF AMERICA,  
District of Maryland, To wit:

Now comes Robert R. Carman, United States Attorney, for the District of Maryland, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing answer are true to the best of his knowledge, information and belief.

Subscribed and sworn to before me, this 21st day of April, 1921.

CHAS. W. ZIMMERMANN,  
Chief Deputy Clerk U. S. District  
Court for District of Maryland.

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*Copy of Agreement Filed with Answer.*

This agreement made this 26th day of July, Nineteen Hundred and Twenty, by and between United States of America, represented by United States Shipping Board and by United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under the laws of the District of Columbia, party of the first part (hereinafter called the Seller), and the Guidera Towing and Transportation Company, of New York City, State of New York, a corporation organized and existing under the laws of the State of —, party of the second part (hereinafter called the Buyer);

Witnesseth:

1. The Seller hereby agrees to sell and the Buyer hereby agrees to take and pay for Two (2) Converted Ferris Type Uncompleted Wood Hulls now lying and situated in the storage yards along the Atlantic Coast of the United States.

2. The Buver agrees to pay for said wood hulls the total sum of One Hundred Twenty Thousand (\$120,000.00) Dollars, apportioned as follows:

For Ferris Hull number Two Hundred Seventy-three (273), named "Catskill," located and lying at Wilson Point, South Norwalk, in State of Connecticut, Sixty Thousand (\$60,000.00) dollars.

For Ferris Hull number Two Thousand Ninety-Nine (2099), named "Fort Pierce," located and lying at Hog Island, State of Pennsylvania,—Sixty Thousand (\$60,000.00) Dollars.

3. It is agreed and understood that the Buyer shall take and accept said hulls where they are and as they are in condition found, and that said hulls are to be sold on a bare hull basis, and that this term shall be held to mean as follows:

The constructive features of the hulls as now standing including the following equipment if on board, installed or otherwise:

- 11      Masts and Booms; Bitts and Chocks;  
         Standing Rigging (Shrouds),  
         Hawse Pipes,  
         Rudder,  
         Hand Steering Gear.

All other equipment on board shall be held and recognized as the property of the Seller but may be purchased by the Buyer at the appraisal value, and if not so purchased, may be removed by the Seller; and it is agreed that if the Seller does not remove said other equipment within sixty (60) days from the date of this agreement, said other material and equipment being on board said hulls shall pass with said hulls and become the property of the Buyer; and it is expressly agreed and understood that said Masts and Booms, Bitts and Chocks, Standing Rigging (Shrouds), Hawse Pipes, Rudder, and Hand Steering Gears, shall not pass to the Buyer or become his property unless the same shall be on board said hulls at the time of the execution of this contract, but the same may be purchased at appraised prices by the Buyer as other equipment, as herein provided to be purchased.

4. It is agreed that concurrently with the signing of this contract the Buyer shall pay to the Seller the sum of Twelve Thousand (\$12,000.00) Dollars in part payment of said hulls. The balance of said purchase price, to wit, the sum of One Hundred Eight Thousand (\$108,000.00) Dollars shall be paid as follows:

Five (5%) per cent of said purchase price, the same being Six Thousand (\$6,000.00) Dollars, shall be paid on the first day of each month subsequent to signing of this contract, beginning six (6) months from the date hereof, until all the said amount has been paid, together with interest thereon; and it is further agreed that interest shall be paid by the Buyer upon deferred payments at the rate of Five (5%) per cent per annum, payable semi-annually. It is further understood and agreed that the certain equipment which does not pass with the hulls and which may be purchased by the Buyer hereunder at appraisal prices shall be paid for as follows:

- 12      The first payment of Fifteen (15%) per cent. thereof shall be made by the Buyer Six (6) months after the execution of this contract, and the remainder thereof shall be paid at the rate of Five (5%) per cent. thereof each month thereafter. Interest shall be paid by the Buyer on all deferred payments at the rate of Five (5%) per cent. per annum, payable semi-annually. All payments to be made by the Buyer hereunder shall be made at the office of the Seller in the City of Washington, District of Columbia. All deferred payments shall be evidenced by promissory notes of the Buyer payable to the Seller. The Seller hereby acknowledges receipt of Three Thousand Eight Hundred (\$3,800.00) Dollars paid by the Buyer to be applied upon and be a part of the first cash payment of Twelve Thousand (\$12,000.00) Dollars.

5. The Buyer hereby agrees to complete the said hulls, and it is further agreed and understood that the title to the said hulls and/or equipment therefor and any additions or improvements made thereto shall be and remain in the Seller until all of the sums of money agreed to be paid by the Buyer shall have been paid.

It is further agreed that from the time of delivery of said hulls to the Buyer and up to the time the same shall be documented, the Buyer agrees to keep said hulls free from all liens and encumbrances and to keep the same insured against fire and/ or builder's risks at the full value thereof, all policies to be payable to the United States Shipping Board for the Seller and the Buyer as their representative interests may appear, and the binders or policies are to be delivered to the said United States Shipping Board.

Upon the documentation of each of said hulls, the Buyer agrees to insure the same at the full value thereof under the American Hull Underwriters' Association form of policy, and said policy is to be payable to the United States Shipping Board for the Seller  
13 and/or the Buyer as their interests may appear, and the binders or policies are to be delivered to the United States Shipping Board.

6. Upon the payment of all sums or amounts due or which become due hereunder, the Seller will execute and deliver to the Buyer a good and sufficient bill of sale for each of said hulls, and to transfer and pass to the Buyer all the right title and interest of the Seller in and to said hulls.

This Agreement shall be executed interchangeably in triplicate; Parts one (1) and Three (3) shall be delivered to the Seller, and Part Two (2) to the Buyer.

In witness whereof, the parties hereto have caused this instrument to be signed by their respective officers thereunto duly authorized, and their respective Corporate Seals to be hereto affixed, duly attested, on the day and year first above written.

UNITED STATES OF AMERICA,  
By UNITED STATES SHIPPING BOARD,  
By W. S. BENSON.  
W. S. BENSON,  
J. LUDLEY. *Chairman.*

Attest:

EDW. J. FLAHERTY, *Secretary.*

By UNITED STATES SHIPPING BOARD,  
EMERGENCY FLEET CORPORATION,  
By W. S. BENSON.  
W. S. BENSON, *Chairman.*

Attest:

EDW. J. FLAHERTY,  
*Secretary.*

GUIDERA TOWING AND TRANSPORTA-  
TION COMPANY,  
By THOMAS F. GUIDERA, *Pres.*

Attest:

EDWARD F. PAITSER.

Approved as to form.

JOHN C. CARMICHAEL,  
JOHN C. CARMICHAEL,  
*Assistant Counsel.*

6/24/20.

14 DISTRICT OF COLUMBIA, ss:

I, J. Parson James, a Notary Public in and for the District of Columbia, do hereby certify that W. S. Benson, who is President of the United States Shipping Board Emergency Fleet Corporation, which said Fleet Corporation, for and on behalf of the United States of America, executed a certain agreement bearing date on the 26th day of July, 1920, hereto annexed, personally appeared before me in said District of Columbia, the said being personally well known to me as the President of said Fleet Corporation which executed for and on behalf of the said United States of America the said agreement, and acknowledged to me that he executed the same as President of said Fleet Corporation, and that the same is the free and voluntary act and deed of said United States of America, through the said United States Shipping Board Emergency Fleet Corporation, and of himself as such President, for the uses and purposes therein expressed.

Given under my hand and seal this 26th day of July, 1920.

J. PARSON JAMES,  
*Notary Public.*

My commission expires June 21, 1925.

STATE OF N. Y.,  
*County of N. Y., ss:*

On the 26th day of June, nineteen hundred and twenty, before me came Thomas F. Guidera, to me known, who being by me duly sworn, did depose and say that he resides in Westbury, N. Y.; that he is the President of The Guidera Towing and Transportation Co., Inc. the Corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

WILLIAM B. CAVEL,  
*Notary Public.*

My commission expires 1921.

Notary Public Rockland County.

Certificate filed in New York County No. 243.

Register No. 1362.

15 *Suggestion of Respondent of Want of Jurisdiction.*

Filed 3rd May, 1921.

In the District Court of the United States for the District of Maryland.

In Admiralty.

BLAMBERG BROTHERS, a Body Corporate,

against

UNITED STATES OF AMERICA.

To the Honorable John C. Rose, Judge of the District Court of the United States for the District of Maryland:

Leave of court having been first had and obtained, your respondent suggests that this Honorable Court is without jurisdiction to determine the issues herein involved and for cause alleges as follows:

First. That on the twenty sixth day of July, 1920, your respondent represented by the United States Shipping Board, and by the United States Shipping Board Emergency Fleet Corporation, entered into a contract of sale with the Guidera Towing and Transportation Company (hereinafter called Towing Company), a corporation of the State of New York, with its principal office in New York City, in said State, for the sale to the said Towing Company by the respondent of the barge Catskill.

Second. That by the terms of the said agreement your respondent agreed to sell said barge Catskill to the said Towing Company at and for the price of sixty thousand dollars of which said purchase price, six thousand dollars was to be paid to your respondent on the day of the execution of the contract of sale aforesaid; by the terms of said agreement the balance of said purchase price was to be paid in equal monthly installments of three thousand dollars, beginning six months from the date of the said contract of sale, all of which will more fully appear from a copy of the said sales contract or agreement heretofore filed in these proceedings by your respondent. Your respondent prays that said sales contract or agreement be taken and made a part hereof fully and to the same extent as if incorporated herein at length.

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Third. That the said Towing Company has paid to your respondent on account of the said contract or purchase price the sum of six thousand dollars and has defaulted in the payment of each and every deferred installment due and payable thereunder. That said barge Catskill was delivered by your respondent to the said Towing Company on July 26th, 1920, since which date possession of the said barge Catskill, her management and operation have been exclusively in the custody and control of the said Towing Company, her agents



and servants, without the custody, control or interference whatsoever by or on the part of your respondent, or anyone duly authorized to represent your respondent.

4. That the contract of affreightment alleged to have been breached in the libel herein filed was made subsequent to the delivery of said barge by your respondent to the Towing Company and while the said barge was in the possession of and was being operated, managed and controlled by the said Towing Company, its agents and servants without the exercise of any management or control whatsoever on the part of your respondent; that your respondent had no interest whatsoever in the pending freight arising out of said contract of affreightment; that the bills of lading issued to and accepted by the libellant arising out of said contract of affreightment, were issued by and in the name of the said Towing Company.

Fifth. That the said barge is now at the port of Havana, Cuba, without the jurisdiction of this Honorable Court and has been libeled in the sum of \$3,725 for wage claims, and in addition to said libel filed as aforesaid, there have been additional libels filed against your respondent in the United States District Court for the Southern District of New York, in the United States District Court for the Western District of Pennsylvania, and in the United States District Court for the Middle District of Pennsylvania, said claims aggregating  
17 an amount in excess of the value of said barge which said value your respondent alleges to be not in excess of fifty thousand dollars.

Sixth. Your respondent further alleges and suggests to this Honorable Court that the libel herein filed, has been filed against your respondent in personam, and your respondent is advised that because of the facts hereinbefore alleged your respondent cannot be proceeded against in an action in personam; that inasmuch as the libel herein filed against your respondent is designed to establish a personal liability against your respondent, that it is entitled to have the libel dismissed. Your respondent is further advised and alleges that it cannot be proceeded against in this Honorable Court by a libel in the nature of in rem proceedings, as provided for by the Act of March 9, 1920, for the reason that at the time of the filing of the libel herein, and at all times since, the said barge Catskill was and has been at the port of Havana, Cuba, and without the jurisdiction of this Honorable Court.

Wherefore, your respondent prays that the said libel be dismissed with costs.

ROBERT R. CARMAN,  
*United States Attorney.*

UNITED STATES OF AMERICA,  
*District of Maryland, To wit:*

Now comes Robert R. Carman, United States Attorney for the District of Maryland, who, being duly sworn according to law, deposes

and says that the facts set forth in the foregoing suggestion are true to the best of his knowledge, information and belief.

Subscribed and sworn to before me, this 3rd day of May, 1921.

ARTHUR L. SPAMER,

*Clerk U. S. District Court for District of Maryland.*

18 *Memorandum of Libellant in Reply to Respondent's Suggestion of Want of Jurisdiction.*

Filed 5th May, 1921.

United States District Court for the District of Maryland.

In Admiralty.

BLAMBERG BROTHERS, a Body Corporate, Libellant,  
against

UNITED STATES OF AMERICA, Respondent.

Memorandum of the Libellant in Reply to the Suggestion Filed by the Respondent.

To the Honorable John C. Rose, District Judge of the United States for the District of Maryland:

The libellant, in reply to the respondent's suggestion herein that this Honorable Court is without jurisdiction to determine the issues herein (this memorandum being conceived as in the nature of an answer to exceptions), alleges as follows:

First. Answering the First paragraph, your libellant, for the purpose of the argument on the issues raised by said suggestion, admits the facts alleged therein.

19 Second. Answering the Second paragraph, your libellant, for the purpose of the argument on the issues raised by said suggestion, admits the facts alleged therein.

Third. Answering the Third paragraph, your libellant, for the purpose of the argument on the issues raised by said suggestion, admits the facts alleged therein.

Fourth. Answering the Fourth paragraph, your libellant, for the purpose of the argument on the issues raised by said suggestion, admits the facts alleged therein.

Fifth. Answering the Fifth paragraph of said Suggestion, your libellant admits the allegations contained therein, except as to the value of the said barge "Catskill," and as to said allegation as to value, your libellant has no knowledge or information sufficient to form a belief. Further answering said Fifth paragraph, your libellant submits that the facts therein alleged are immaterial to the issue of jurisdiction raised by the Suggestion of the respondent herein.



Sixth. Answering Paragraph Sixth of said Suggestion, your libellant admits that the libel filed herein is against the respondent in personam. Your libellant admits that, under the facts admitted herein, no direct personal liability, as personal liability is commonly understood in Admiralty suits in personam, can be established against the respondent. Your libellant is proceeding by a libel in personam against the respondent, as owner of the said barge "Catskill," to establish a liability of the said barge "Catskill," as provided for in the Act of Congress, approved March 9, 1920, commonly known as "The Suits in Admiralty Act"—the right to bring said libel in personam being created by said Act as a substitute for the ordinary libel in rem. Your libellant denies that the jurisdiction of this Court over the matters alleged in the libel, is dependent on finding said barge "Catskill" within the jurisdiction of this  
 20 Honorable Court, but on the contrary, your libellant alleges that the facts alleged in Paragraph First of the libel are sufficient, in view of the provisions of the said Act of Congress, approved March 9, 1920, to establish the jurisdiction of this Honorable Court.

Wherefore, the libellant prays that the prayer of the respondent in said suggestion contained, that the libel herein be dismissed with costs, be denied.

TYLER AND ENGLAND,  
 HARRINGTON, BINGHAM AND ENGLAR,  
*Proctors for Libellant.*

Office & P. O. Address: Number 64 Wall Street, Borough of Manhattan, City of New York.

HAROLD T. AMBERG,  
*Of Counsel.*

21 *Opinion of the Court.*

Filed 31st May, 1921.

In the District Court of the United States for the District of Maryland.

No. 797. Admiralty.

BLAMBERG BROTHERS, a Body Corporate.

vs.

THE UNITED STATES OF AMERICA.

ROSE, *District Judge:*

On July 26th last, the United States agreed to sell its schooner barge, the Catskill, to the Guidera Towing and Transportation Company, hereinafter called the Towing Company, for sixty thousand dollars—six thousand dollars down, and fifty-four thousand in eigh-

teen equal monthly installments, the first of which was not payable until the succeeding January. The purchaser went into immediate possession, although the vendor retained title until the balance of the purchase price was paid.

In October, the Towing Company entered into contracts of affreightment with the libellants and many others, under which it received on board the barge at Baltimore, goods to be carried to Havana and there delivered. When in November, the vessel reached its destination, it found commercial conditions there greatly disturbed. The inability of the Towing Company to meet its engagements became manifest. The cargo was not delivered to the consignee, and six months later, was still on board. This libel has been filed to recover against the government, the Liability in rem of the barge for the non-delivery of libellants's goods.

The respondent says that this Court is without jurisdiction. It is not questioned that under the Act of March 9, 1920, (41 Stat. 525) the libellants may, in a proceeding in personam, recover in the proper district for any liability which in the Courts of the United States might have been enforced against the barge in rem, had she been privately owned, but it is said that as the vessel was at the time the libel was filed, outside of this country, and has ever since remained in foreign waters, it would not have been subject to the processes of our Courts had it belonged to an individual and that it follows that no liability may now be asserted in them against the Government.

22 The principal purpose of the statute under which the proceedings was brought, was to prevent within the United States, the arrest upon judicial process of any government owned ship or cargo, without thereby working injustice or hardship to those who as against either, had valid claims which if the vessel or the merchandise had belonged to private persons, they might have asserted in rem, but there is in it, and in its legislative history, cause to believe that it may also have intended to give the consent of the United States to being made a respondent in suits in personam upon some classes of maritime liabilities in which individuals would have been liable in personam, but upon which proceedings in rem could not have been maintained.

The first section of the statute forbids the arrest or seizure of a government owned ship or cargo. The second provides that a libel in personam may be brought against the United States when, if the vessel or merchandise mentioned in the first section had been privately owned, a proceeding in admiralty could be maintained at the time the suit was commenced, provided the ship in question was employed as a merchant vessel.

Then follows the venue provision, upon the proper construction of which the parties are at issue. It reads:

"Such suits shall be brought in the District Court of the United States for the District in which the parties or some of them reside or have their principal place of business in the United States, or in which the vessel or cargo, charged with liability is found."

It is further provided that upon the application of either party, the cause may, at the discretion of the court, be transferred to any other District Court of the United States.

The libellants live in this District, and they say that the quoted language is express authority for the institution of the suit in this Court. In their view the libel may be properly filed in (1) the District in which any of the libellants live or (2) in which they have their principal place of business or (3) in which the vessel charged with liability is found. They argue that Congress knew that it was giving a somewhat extended choice of venue and guarded against the possibility of resulting inconvenience by the transfer provision.

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The government replies that so to hold is to misinterpret the purpose of the provisions as to venue. In its view the libel must be filed in the District in which the offending res is, whenever the cause of action is one in which the liability would be in rem only if the ship or cargo were privately owned. Permission to sue wherever libellant lives or has its principal place of business is in its view, given only in those cases in which the proceeding is one which in its origin, is essentially in personam. It was intended as a limitation rather than an extension upon the number of districts in which the suit might be brought. Where the United States is liable in personam, and consents to be sued generally, proceedings might properly be instituted in any one of some four score districts for the government can be found in everyone of them. No such wide range of choice is necessary for the protection of persons aggrieved, and in practice it might if permitted, lead to abuse and would, upon occasion, cause much inconvenience. The libellants could not complain if they were allowed to sue where they lived or had their principal place of business. The libellants at bar not only challenge directly this construction of the venue provisions, but assert that there is nothing in the act to show that Congress had in mind any distinction as to venue between causes of action which as against individuals or individually owned ships or cargo, would have been in personam or in rem, and that on the contrary, its primary purpose was to ensure that as against the United States, they should always be in personam, reserving to the libellant, the right under some circumstances important, to claim if he could, that his substantive rights should be those he would have had in a proceeding in rem. They argue that it is by no means clear that Congress has consented that the United States shall be sueable in personam at all, unless a liability in rem would have existed except for the statute. They point out that if such permission is not given, and if the government's construction of the venue provision is accepted, there will be no circumstances in which the right to sue in the District of libellant's resident or principal place of business, can be exercised.

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The learned advocates for the government do not themselves contend that the United States has agreed to be sued in personam in admiralty in all cases in which an individual might be, but they say it has, in that large number of instances in which liability depends upon its relationship as owner or operator of a

particular ship as distinguished from a liability growing out of some maritime transaction not specifically connected with a particular vessel.

These questions and others have been discussed on one side and the other with zeal, learning, industry and ability. In the end both admit that there are things in the statute which do not fit in well with any theory as to the class of cases in which the government has consented to be sued, and that the result of the legislative history of the enactment does not make its interpretation easier. It is quite probable that somewhere in the United States there are even now pending cases in which some or all of these questions must be passed upon, but it does not appear that it will be necessary to do so in the one at bar.

There is no reason to suppose that Congress intended to make the United States sueable under any circumstances in which a suit could not have been instituted in this country, were the ship or cargo privately owned, and yet if the libellants' contention be sustained, that will be the result here. There was no privity of contract between the United States and the shippers of cargo by the Catskill, nor has the United States done them any actionable wrong. If it were an individual no proceeding in personam could be brought against it, either in admiralty or at common law. Nor could any libel be maintained against the ship in rem in any court of the United States, because none of them could have taken possession of her. The grant of jurisdiction made by the second section of the Act is expressly limited to such proceedings as "could be maintained at the time of the commencement of the action herein provided for" and in the instant case at that time, there was no court in the United States in which the suit could have been maintained either in rem or in personam, had an individual occupied the same relation to the cause of action as was borne by the United States.

25 Nor is this a narrow construction. It is one in perfect harmony with the most liberal and far reaching purpose which can reasonably be attributed to Congress. To hold that it intended that a citizen should be no worse off because of government ownership, is as far as any one will be justified in going. There is no reason to suppose that it intended to open the doors of its courts as against the United States to suits which could not there have been prosecuted against an individual or his property. The general language of every statute must be read in the light of the legislative intent insofar as that is unmistakably expressed.

It follows that as well when this libel was filed as now, this court was without jurisdiction to entertain it, and it must be dismissed.

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*Decree of Court.*

Filed 4th June, 1921.

In the District Court of the United States for the District of Maryland.

In Admiralty.

BLAMBERG BROTHERS, a Body Corporate, Libellant,

vs.

THE UNITED STATES OF AMERICA, Respondent.

The above cause having been heard upon libel, answer, amended answer and/or suggestion of Respondent of want of jurisdiction and motion to dismiss libel therefor, and memorandum of libellant in reply to same.

Therefore it is this 4 day of June, 1921, by the District Court of the United States for the District of Maryland sitting in admiralty, adjudged, ordered, and decreed, that the libel filed herein be and the same is hereby dismissed for want of jurisdiction.

JOHN C. ROSE,  
*District Judge.*

27

*Court's Certificate of Lack of Jurisdiction.*

Filed 4th June, 1921.

In the District Court of the United States for the District of Maryland.

BLAMBERG BROTHERS, a Body Corporate, Libellant,

vs.

UNITED STATES OF AMERICA, Respondent.

*Certificate of Lack of Jurisdiction.*

This cause came on to be heard upon libel, answer, amended answer, (and or suggestion of respondent of want of Jurisdiction and motion to dismiss libel therefor), and memorandum of libellant in reply to suggestion as to jurisdiction.

The libel is filed in personam against the United States of America under the provisions of the "Suits in Admiralty Act" of March 9th, 1920 (United States Compiled Statutes, section 1251-1.4 et seq.) and seeks to enforce a liability for non-delivery of cargo and cargo damage against the respondent when the res at the time of the commencement of this action and continuously since then has been located in the harbor of Havana, Cuba. The Respondent denies the jurisdiction of this Court in this cause to entertain any proceeding in Admiralty under the provisions of the aforesaid Act, contending that

had said res been privately owned no proceeding would lie, in this court under the circumstances of this case.

Now, therefore, it is certified that the question of the jurisdiction of this court, upon the grounds hereinbefore stated, to wit, (that at the time said libel was filed and now this court in this cause was without jurisdiction to entertain a libel either in personam or in rem under the Act of March 9, 1920, aforesaid) was the issue upon which this cause was decided. I having found that this Court was without jurisdiction and it was the duty of the court to dismiss the libel, which was accordingly done. I further certify that this is the only question of law upon the pleadings and process for the decision of the Supreme Court of the United States and that this certificate was granted at the term in which the decree in this cause was entered.

June 4, 1921.

JOHN C. ROSE,  
District Court.

28      *Petition for Appeal and Order of Court Allowing Same.*

Filed 14th July, 1921.

In the District Court of the United States for the District of Maryland.

BLAMBERG BROTHERS, a Body Corporate,

vs.

UNITED STATES OF AMERICA.

To the Honorable John C. Rose, District Judge of the United States Court for the District of Maryland:

The above named Libellant feeling aggrieved by the decree rendered and entered in the above entitled case on the 4th day of June, Nineteen Hundred and Twenty-one, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith. And said Libellant prays that its appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said decree was passed, duly authenticated, be sent to the Supreme Court of the United States, sitting in Washington, under the rules of such Court in such cases made and provided, and that the errors assigned may be corrected and the said decree of the District Court of the U. S. of the District of Maryland may be reversed.

And Your Petitioner further prays that the proper Order relating to the required security to be required of it, be made.

And as in duty bound, etc.,

TYLER AND ENGLAND,  
HARRINGTON, BINGHAM AND  
ENGLAR,

*Proctors for Blamberg Brothers,  
a Body Corporate, Libellant.*

29 Upon the motion of Tyler and England, Proctors for Libellant, it is hereby ordered that an appeal to the Supreme Court of the United States, from the decree heretofore filed and entered herein, be and the same is hereby allowed, and that a certified transcript of the Record, Libel, Answer, Amended Answer, Certificate of Respondent of want of jurisdiction, memorandum of Libellant in reply thereto, exhibits and all proceedings be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of \$500.00/100 Dollars, for costs on appeal.

Dated 14<sup>th</sup> July, 1921.

JOHN C. ROSE,  
*U. S. District Judge.*

30 *Assignment of Errors.*

Filed 14th July, 1921.

In the District Court of the United States for the District of Maryland.

No. 797. Admiralty.

BLAMBERG BROTHERS, a Body Corporate,

vs.

THE UNITED STATES OF AMERICA.

*Assignment of Errors.*

Now comes Blamberg Brothers, the libellant-appellant, by Tyler & England and Harrington, Bigham & Englar, its proctors, and having appealed, from the Final Decree of the District Court of the United States for the District of Maryland, entered in said Court on the 4th day of June, 1921, whereby the libel filed herein was dismissed for want of jurisdiction, to the Supreme Court of the United States, in a cause of contract and cargo damage, civil and maritime, assigns the following as the errors, on which it intends to rely, on said appeal:

The District Court of the United States of America for the District of Maryland erred: in that

(1) It held that it was without jurisdiction to entertain the libel filed herein.

(2) It held that the venue provisions of the Act of March 31 9th, 1920, 41 Statutes, 525, were not in the alternative, that is, allowing the filing of a libel in respect of suits authorized in said Act in either the place where the parties, or some of them, "reside or have their principal place of business in the United States, or in which the vessel \* \* \* charged with liability is found."



(3) It held that an exclusively in rem liability attaching to a vessel owned by the United States could not, by virtue of said Act of March 9th, 1920, be enforced by a libel in personam against the United States, brought in the District in which the libellant had its principal place of business in the United States.

(4) It held that an in rem liability attaching to a vessel owned by the United States could not, by virtue of said Act of March 9th, 1920, be brought in a District other than a District in which the vessel so liable is found at the time of the filing of the libel.

Wherefore Libellants Appellants pray for a correction of the errors and that said decree of the District Court of the U. S. for the District of Maryland may be reversed.

TYLER & ENGLAND,

*Office & P. O. Address: 612 Equitable  
Building, Baltimore, Maryland, and  
HARRINGTON, BIGHAM &  
ENGLAR,*

*Office & P. O. Address: 64 Wall Street,  
Borough of Manhattan,  
City of New York,  
Proctors for Libellant-Appellant.*

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*Appeal Bond.*

Filed August 5, 1921.

Know all men by these presents, That we, Blamberg Bros., Inc. as principal, and Maryland Casualty Company a Corporation of the State of Maryland, Baltimore, Maryland, as surety, are held and firmly bound unto United States of America in the full and just sum of Five Hundred—(\$500.00) dollars, to be paid to the said United States of America, its certain attorney, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 20th day of July, in the year of our Lord one thousand nine hundred and twenty one.

Whereas, lately at a District Court of the United States for the District of Maryland in a suit pending in said Court, between Blamberg Bros., Inc., vs. United States of America a decree was rendered against the said Blamberg Bros., Inc., and the said Blamberg Bros., Inc., having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Blamberg Bros., Inc., shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then



the above obligation to be void; else to remain in full force and virtue.

33 [Seal of Blamberg Bros., Inc.]

BLAMBERG BROS., INC.,  
L. H. BLAMBERG,  
*Sec. Treasr.*

[Seal of Maryland Casualty Company.]

MARYLAND CASUALTY COMPANY,  
By WM. F. LEHNERT, *Attorney-in-Fact.*

Sealed and delivered in presence of

J. T. ENGLAND.

J. WILSON.

Approved by—

JOHN C. ROSE,

*U. S. District Judge for District of Maryland.*

34 UNITED STATES OF AMERICA, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal, filed in the Clerk's Office of the District Court of the United States for the District of Maryland, wherein Blamberg Brothers, a body corporate is Appellant and you are Appellee, to show cause, if any there be, why the judgment and decree rendered against the said Appellant as in the said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John C. Rose, Judge of the District Court of the United States for the District of Maryland, this fifth day of August, in the year of our Lord one thousand nine hundred and twenty one.

[Seal of the United States District Court, Maryland.]

JOHN C. ROSE,  
*U. S. District Judge.*

Attest:

ARTHUR L. SPAMER,  
*Clerk District Court of the United  
States for the District of Maryland.*

[Endorsed:] Blamberg Bros. vs. U. S. of America. Citation retbl. 3 Sept.

Service of the within Citation acknowledged this 10th day of August, 1921.

ROBERT R. CARMAN,  
*U. S. Atty., Dist. Md.*

35      *Stipulation of Counsel as to Making up Record.*

Filed 12th August, 1921.

In the District Court of the United States for the District of Maryland.

No. 797. Admiralty.

BLAMBERG BROTHERS, a Body Corporate,

vs.

UNITED STATES OF AMERICA.

It is stipulated and agreed by and between the parties to this cause that the transcript of record on appeal of Blamberg Brothers, to the Supreme Court of the United States in said cause shall consist of the following, viz:

1. Libel.
2. Answer of Respondent.
3. Suggestion of Respondent of Want of Jurisdiction.
4. Memorandum of Libellant in reply to Respondent's suggestion for want of Jurisdiction.
5. Opinion of the Court.
6. Decree of Court.
7. Court's certificate of lack of jurisdiction.
8. Petition for Appeal and Order allowing appeal.
9. Assignment of Errors.
10. Appeal Bond.
11. Citation.
12. This stipulation.
13. Memorandum of the Clerk.
14. Order to transmit Record.
15. Clerk's Certificate.

And it is further stipulated and agreed that the Clerk of this Court, shall make up a transcript of the record on appeal in this case, transmit the same to the Clerk of the Supreme Court of the United States, and be printed in accordance with the

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TYLER AND ENGLAND,  
*Proctors for Appellant.*  
 ROBERT R. CARMAN,  
*Proctor for Appellee.*

37 *Order to Transmit Record.*

And, thereupon, it is ordered by the Court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Teste:

ARTHUR L. SPAMER,  
*Clerk.*

38 *Clerk's Certificate.*

UNITED STATES OF AMERICA,  
*District of Maryland, To wit:*

I, Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland, do hereby certify that the foregoing is a true transcript of the record and proceedings of the said District Court, together with all things thereunto relating in the therein entitled cause, made up in accordance with stipulation of counsel for the respective parties filed in said cause.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, this 12th day of August, 1921.

[Seal of the United States District Court, Maryland.]

ARTHUR L. SPAMER,  
*Clerk.*

Endorsed on cover: File No. 28,467. Maryland D. C. U. S. Term No. 512. Blamberg Brothers, appellant, vs. The United States of America. Filed Sept. 3, 1921. File No. 28,467.

(4686)